

EXHIBIT C

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1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 In the Matter

5 of

6 DANA CORPORATION,

7 Debtors.

8 -----x

9 September 19, 2007

10 United States Custom House
11 One Bowling Green
12 New York, New York 10004
13

14 Hearing in re Jones Day Notice of Amended Agenda
15 of Matters Scheduled.
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17

18 B E F O R E:

19 HON. BURTON R. LIFLAND,

20 U.S. Bankruptcy Judge
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1 A P P E A R A N C E S:

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A P P E A R A N C E S (Continued):

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P R O C E E D I N G S:

MR. ELLMAN: Good morning, your Honor.
Jeffrey Ellman from Jones Day on behalf of the debtors. We
have submitted our agenda for today and we're going to go
roughly in order of the agenda, we might do maybe one out
of order a little bit, but roughly in order of the agenda.

The first two items have been adjourned, so
we are really starting collectively items three and four.
It's a short agenda, but we have some important matters,
and only one thing I believe is contested, which is at the
end of the agenda.

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12 The first two items we are very pleased to
13 bring before the court are the first motion that addresses
14 the fundamental commercial relationships that Dana has with
15 its customers. These are Ford and Chrysler, which we are
16 going to do in that order, which is the opposite of the
17 agenda, if it's okay with the court. At the next hearing
18 you'll see motions filed that relate to GM and Toyota.

19 As the court is aware, the customer
20 relationships are critical to Dana, to its business and to
21 its restructuring efforts. And there has been a
22 longstanding effort in this case to address the customer
23 pricing and profitability issues, and I think the court is
24 somewhat aware of that. But before we get into these two
25 motions, what I propose to do, if it is okay with the

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1 court, is to go through a little bit of background as to
2 what Dana has been doing on the customer initiative in this
3 case to broaden the background to the two motions.

4 THE COURT: Go ahead.

5 MR. ELLMAN: Your Honor, some of this may
6 sound a bit familiar because you probably recall that some
7 of this was discussed in the labor trial, the 1113, 1114
8 matters, and there is some discussion of this also in the
9 disclosure statement, if your Honor has had a chance to
10 peruse that at all. You may recall that Dana has been
11 looking at restructuring issues as for annual profitability
12 and improvement in the range of 405 to 540 million dollars.
13 And you may recall that there have been different
14 iterations of a sort of bubble chart describing the source
15 of this potential savings. There were six basic buckets --

16 THE COURT: Bubbles and buckets.

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17 MR. ELLMAN: Exactly. We have had the
18 overhead, we had the manufacturing footprint, the retiree
19 cost, the labor union and nonunion, as well as the vendors.
20 And of course the sixth one, which is what we are talking
21 about really today, is the customer, the pricing and
22 profitability of piece of this. And that number that was
23 assigned to that piece, that bucket or what have you, was
24 175 to 220 million dollars, and those are the annual
25 savings being sought from customers. It is obviously

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1 critical, as you've heard I think more than once, the
2 returning U.S. operations to viability and long term
3 profitability.

4 The pressures that have been facing Dana in
5 the marketplace have been severe. There have been
6 increasing commodity material costs, inflation of those
7 costs have been significant, and those are costs that are
8 hard to pass to the customers. You've had pressures on the
9 OEM manufacturers, as the court I'm sure is aware, of the
10 loss of market share, continuous pressure to price down to
11 match prices from low cost countries, competitive pressure
12 in the market, and of course pressure for improvements of
13 productivity which also pressures to pass our savings on to
14 customers. Volumes have been down. The industry has
15 experienced soft sales market, less revenues for companies
16 like Dana, less ability to recoup capital costs from sales.

17 So all these sort of come together and
18 bring us to the point where profitability is an issue in
19 many customer programs. So the process was put in place,
20 described to this court I think at least on one or two

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21 occasions in the past, is to look at all the vehicle
22 programs, put them out on the table, take a hard look and
23 particularly focusing on one hundred of the programs
24 looking at I think four things in particular. Strategic
25 importance of the customer, the need for a diverse customer

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1 base, whether there are alternatives to the customers in
2 sourcing, and what is the history of price down; what is
3 the price of history with that particular customer?

4 So Dana developed what was, in their view,
5 the appropriate price and economic relief for each of the
6 customers. We developed customer specific strategy as
7 opposed to a vague and broad strategy, but we targeted the
8 individual customers, and in the beginning of the summer of
9 2006, began to discuss the economics and pricing issues
10 with customers.

11 And as the court can I'm sure appreciate,
12 going to customers and asking for this kind of economic
13 relief is no easy feat. The customers have long standing
14 and very broad relationships with Dana. They have a great
15 deal of economic influence in the marketplace and they are
16 under their own pressures in the marketplace themselves.
17 So going into this environment and asking for this kind of
18 relief, which is already difficult to do, becomes more
19 difficult.

20 Nevertheless, Dana goes out and is looking
21 for the 175 to 225 million in annual, ongoing savings from
22 customers; they are going to Ford and Chrysler, both of
23 which are in front of the court today, GM, Toyota and other
24 customers. So it's a very broad program and a lot of work
25 over many months. And two of the people who were really

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1 responsible in a very large way for that effort are here
2 today in the courtroom, and I would like to introduce to
3 the court, Robert Fesenmyer who is here.

4 MR. FESENYER: Good morning, your Honor.

5 THE COURT: Good morning.

6 MR. ELLMAN: And he is the president of the
7 global business developed of Dana. He's been at Dana for
8 over 30 years, and you have at least four declarations from
9 Mr. Fesenmyer on the four motions that are pending. He is
10 the witness who would testify to the support of these
11 motions that are pending.

12 And Ted Stenger, who is here, is the chief
13 restructuring officer of Dana, who I think the court is
14 familiar with. He had testified to some of the background
15 on the customer programs in the past in connection with the
16 labor trial. And he also was very much involved in the
17 discussions with customers.

18 Now between Mr. Stenger and Mr. Fesenmyer
19 and a lot of other people engaging in meetings with these
20 customers, you start at the end of 2006 and the beginning
21 half of 2007 to reach agreements with customers. And we
22 are starting to get some price relief, some of which is
23 being implemented immediately and some of which comes in
24 over time. And then the fun part begins, which is
25 documenting those agreements, which in some cases have

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1 taken a very long period of time. But the effort was
2 ultimately well worth it. And if you look at 175 to 225

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3 million dollars that we are looking for in annual price
4 relief, economic relief from customers, what you end up
5 with is what we expect to be 180 million dollars in
6 annualized profit improvements from customers. It's within
7 the range that we targeted, it will be an important
8 contribution to the restructuring, it will be an important
9 component of our going forward business.

10 So that's sort of the background leading us
11 to the Ford motion. And the Ford motion, which is actually
12 agenda item four in your binder, seeks approval of a series
13 of four different agreements with Ford, commercial
14 agreements. And this is an example of taking some time to
15 document these. We had an agreement in principal reached
16 in December of 2006 with Ford, and these agreements were
17 signed in August and were promptly brought to the court for
18 approval after they were executed. So obviously they
19 represent many months of hard work with the parties, and
20 allows us to continue to be a supplier of, and a business
21 partner with Ford for hopefully many years. So Dana is
22 extremely pleased to be able to bring this to the court.

23 Now before we get into the actual details
24 of what are in these documents, I think there are a couple
25 of preliminary things I wanted to raise. And one is I

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1 think the most important one, which is that the specific
2 terms of these agreements and at least some of the
3 justifications that go behind the agreements, why they are
4 appropriate from a business perspective in its business
5 judgment had highly confidential and sensitive. It brings
6 in pricing, it brings in other commercial terms and
7 conditions.

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8 So what we have done, and I think your
9 Honor is aware, is we have filed a declaration by Mr.
10 Fesenmyer, one of the declarations I referred to earlier,
11 under seal, with the Court's permission, which describes
12 the confidential or at least many of the confidential
13 business justifications for the transaction, and it does
14 attach the commercial agreements. But the commercial
15 agreements and those confidential business justifications
16 are not in the public record and have not be included in
17 our motion.

18 So what we intend to do today is to talk
19 very briefly on the record about the non confidential
20 aspects of the settlement. These are consistent with
21 what's in the motion we did file. And our view is that
22 with that description, with the motion that's publicly
23 available, with the papers that the court has that have
24 been filed under seal that are available to your Honor and
25 that have been shared, of course, with the professionals

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1 for the creditors' committee, we think there is sufficient
2 basis simply to take that in and to rule today.

3 If the court, for whatever reason it did
4 have specific questions, did want to talk more about the
5 terms of the agreements or wanted to ask questions of
6 counsel or of Mr. Fesenmyer about the contents of the
7 declaration that he would testify to if so asked, we would
8 request that that be done in camera either in chambers, or
9 clear the courtroom or what have you, but we are not
10 prepared to talk about those details in a public setting at
11 this point.

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12 The second point, just to mention so it's
13 clear what we are talking about today on Ford is that this
14 relates to the Ford frame business. This relates to Dana's
15 sale of vehicle frames to Ford. Dana has other businesses
16 with Ford selling axles and other parts to Ford, and we
17 have been negotiating with Ford on those programs as well,
18 and they are not part of what is in front of the court
19 today, and they may not be ever be presented to the court
20 because those are agreements, like some of our other
21 customer agreements, that were really ordinary course type
22 of settlements. They didn't bring in other types of
23 agreements that would require court approval. So we are
24 really talking about one piece of the Ford business which
25 is important but not the entire scope of the Ford business.

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1 So, finally to the actual contents of what
2 we are asking the court to do today, starting by talking
3 about what Ford is; Ford is our largest customer; it's Dana
4 Company's largest customer. It's also the largest customer
5 of Dana's structural solutions group, which is the part of
6 Dana that makes frames for Ford. And those frames relate
7 to a number of programs; the F150 pickup, the F150 Heritage
8 truck, the Expedition Navigator Sport Utility Vehicle, the
9 previously produced frames for the Free Star Van and the
10 super duty truck.

11 There are a number of programs here at
12 issue. Of these the most prominent and important one is
13 the Ford F150 pickup truck. Dana has made frames for that
14 particular vehicle for 30 years, so it's been an important
15 Dana over the years, and because of all these programs,
16 that Dana based component of it, the sale of frames has

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17 been in the hundreds of millions of dollars on an annual
18 basis.

19 In the negotiations with Ford at the high
20 level there are basically three points, three topics of
21 discussion. One was pricing for current programs, price
22 relief for things we are doing right now. The second one
23 is ordinary course commercial claims for early termination
24 of programs to recoup capital costs that would have
25 otherwise been recouped through ongoing business where a

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1 program was terminated early, for start up costs for new
2 programs; those types of plans. And the third piece was
3 sourcing for the next generation of the F150 pickup truck
4 known as the P415 program, formalizing that sourcing and
5 pricing for that sourcing so that the price relief we are
6 getting to the current programs will continue into the
7 future with committed new business and committed pricing to
8 achieve that.

9 So those are the three basic sources of
10 what we are doing here. On the P415 pickup truck, the
11 future business of that program runs, or projected to run
12 from 2008 through 2013. So the per price relief at a
13 price, establishing a price, and other terms relating to
14 the ongoing business, we feel comfortable that the Ford
15 settlement does provide for an ongoing benefit to the
16 estate.

17 So to summarize the four agreements that we
18 have in front of the court, we have future pricing, we have
19 termination claims resolved, start up costs claims
20 resolved, we have an agreement for Dana to be the primary

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21 but not the sole source of the future F150 frames and under
22 the P415 program, the firm pricing agreements that forego
23 scheduled price downs in the future, and as part of
24 resolving all these appropriate releases between parties,
25 which is part of the reason that we are in front of the

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1 court today, because that is something we need court
2 approval to do.

3 I think the key point out of all that, if
4 you add all that together, is the pricing increases and
5 commercial terms, all the things I just mentioned, are
6 going to allow now Dana to have an ongoing business with
7 Ford for the frame business that is going to be profitable.
8 we can make and sell the frames profitably which was not
9 true in the past. In the past, most recently anyway, these
10 were programs that were not profitable. And as I
11 mentioned, with the new P415 programs agreements on
12 sourcing and pricing, those benefits will continue beyond
13 this year into the future.

14 The ordinary course claims that were
15 settled, in Dana's view, the settlements were within what
16 we thought we were entitled to under those claims. we
17 don't believe that there were any significant concessions
18 or give away's, we believe that they were fair settlements
19 of ordinary course claims. The belief by Dana in their
20 business judgment is that they negotiated the best deal
21 that they can under the circumstances. It is plainly
22 preferable from the debtors' perspective to the only other
23 available alternative really that was out there, which was
24 to say these were unprofitable programs we will reject the
25 agreements and walk away from this business.

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1 That alternative, I guess somewhat obvious,
2 but has several down sides, one of which is, of course,
3 substantial impact on our relationship with the customer
4 that does lots of other business with Dana besides this
5 substantial piece of business; lost business, which is, as
6 I mentioned, hundreds of millions of dollars of revenue a
7 year with really no place to replace it. There is no real
8 prospect to replacing that business, and the possibilities
9 of a very large rejection damage claim which presumably
10 would be contested and that would lead to litigation, again
11 litigating with one of our longstanding customers which is
12 not a prospect that will give any benefit to the estate or
13 anyone else.

14 So you put it all together, your Honor,
15 settlement with our largest customer in a way that we think
16 is fair and appropriate allows us to move forward
17 profitably in the frame business with Ford. We think this
18 will be one of the important cornerstones of the
19 restructuring, and therefore would ask for it to be
20 approved.

21 And my last culled point would be I guess
22 that the creditors' committee, as I mentioned before, has
23 been -- the professionals have been given copies of the
24 confidential material that the court also has, which is
25 filed under seal. We've had meetings with the committee on

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1 multiple occasions to talk about just some of the customer
2 issues. My understanding is that the committee supports

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3 the relief, and they will tell what their position is
4 themselves, but my understanding is they support the
5 relief, and we have had no objections to the proposal.

6 So in our view there is no reason to not
7 approve this and we would ask the court, again, to sign the
8 form of order that will attend to it.

9 THE COURT: Does anyone want to be heard?

10 I may also note that there are two
11 witnesses present in the court available for inquiry, if
12 anybody wants to make inquiry. Does anyone want to be make
13 inquiry?

14 There's no response.

15 MR. MAYER: The committee supports the
16 debtors, your Honor.

17 THE COURT: Very well. The court has
18 reviewed the documents filed under seal pursuant to Section
19 107(b)(1), which is appropriate applied, especially in
20 situations such as this. It may very well be that that's
21 the reason that 107 was put into effect and then
22 embellished afterward. But I do find that the business
23 judgement standard has been met and certainly this grand
24 pass is a best interest test and I will approve it.

25 MR. ELLMAN: Thank you, your Honor. If I

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1 might approach?

2 THE COURT: Yes.

3 I've signed the order.

4 MR. ELLMAN: Thank you, your Honor.

5 MR. FEINSTEIN: Good morning, your Honor.

6 Robert Feinstein of Pachulski Sang Ziehl and Jones. We are
7 conflicts counsel to debtors and debtors in possession. My

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8 task as conflicts counsel today is to present the Chrysler
9 motion. In as much as Chrysler is a Jones Day client, we
10 handled this matter along with the same personnel of the
11 company, Mr. Fesenmyer and Mr. Stenger.

12 As Mr. Ellman described to the court,
13 settlements with customers such as Chrysler are a critical
14 part of the debtors' restructuring efforts. And the
15 company faced the same challenges in the Chrysler
16 discussions as it did with Ford in terms of attempting to
17 negotiate major economic concessions from major customers
18 like Chrysler. Chrysler is one of the debtors' five
19 largest customers. Historically Dana has produced and
20 produces axles and prop shafts for Chrysler which we
21 referred to in the motion collectively as component parts
22 that are used in Chrysler sport utility vehicles.

23 As with Ford, this represents hundreds of
24 millions of dollars of business annually for the Dana
25 Companies, and all the same concerns and economic pressures

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1 affected this relationship as with Ford.

2 Also the Dana Companies purchase axles from
3 Chrysler, which presents some unique circumstances in that
4 there --

5 THE COURT: You mean you sell them and then
6 buy them back?

7 MR. FEINSTEIN: No. Actually Dana buys
8 axles from Chrysler and then incorporates them into
9 components which are then used in vehicles. That's my
10 understanding.

11 THE COURT: And resold to another OEMs?

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12 MR. FEINSTEIN: I don't think so. I think
13 back to Chrysler is my understanding.

14 So there are liabilities going in both
15 directions. And one of the matters resolved by the
16 settlement, apart from the pricing and other concerns that
17 were addressed in the Ford situation, is a prepetition
18 agreement between Dana and certain of its affiliates and
19 Chrysler with regard to setoffs that essentially permitted
20 tri parte setoffs where Dana was owed money by Chrysler,
21 Chrysler was owed money by a Dana affiliate. And this
22 agreement purported to give Chrysler the right to offset,
23 among the various obligations with respect to these Dana
24 parties.

25 Prepetition an issue arose as to whether

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1 Dana Corporation had authority to enter into that setoff
2 agreement on behalf of its subsidiaries. It's one of the
3 issues that's resolved by the settlement. Also Chrysler
4 filed a number of proofs of claims in the case; 715
5 thousand for axles that were sold by Chrysler to Dana
6 Companies, 75 thousand dollars for warranty claims, and
7 then unliquidated claims for warranty issues.

8 As with Ford, the debtors determined that
9 it was necessary to approach Chrysler and try to negotiate
10 price concessions as part of the overall restructuring
11 effort. And what ensued was a lengthy series of meetings
12 between representatives of the debtors, representatives of
13 Chrysler, and this culminated in the settlement agreement
14 which is attached to the Fesenmyer declaration that, with
15 the court's permission, was filed under seal. And that
16 agreement reflected months of hard work and effort to

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17 resolve the pricing issues, the issues surrounding the
18 setoff agreement. And as a result of that agreement, Dana
19 is now positioned to continue as an important supplier to
20 Chrysler for years to come.

21 As with the Ford agreement, there are quite
22 a number of sensitive business matters reflected in the
23 settlement agreement, so that it has been filed under seal.
24 And I would highlight the non confidential terms on the
25 record and offer once again, that if your Honor has

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1 questions about the proprietary aspects that we either do
2 that in camera or clear the courtroom. But on a public
3 level, the settlement agreement has significant pricing
4 changes for the benefit of Dana, some of which are
5 retroactive to earlier this year, the rest of which are
6 prospective and provide considerable economic benefits to
7 Dana going forward.

8 The agreement also has Dana assuming the
9 setoff agreement that will resolve the controversy
10 surrounding that agreement and assuming other existing
11 purchase orders whose terms weren't modified, but all of
12 these purchase orders going forward now provide Dana with
13 an economically viable platform for the various Chrysler
14 programs that it's party to.

15 The settlement agreement also provides for
16 the withdrawal of the various proof of claim that Chrysler
17 filed with the caveat that prospective warranty claims are
18 not being released or discharged.

19 And finally, as with Ford, there is an
20 exchange of mutual releases, save for the obligations that

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21 are set forth in the settlement agreement. And that would
22 include a release of any Chapter 5 claims against Chrysler.
23 The benefits of the agreement as reflected
24 in the Fesenmyer declaration are quite considerable to the
25 debtors, and the settlement avoids protractive litigation

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1 over the setoff agreement, and obviously allows Dana to
2 move forward in an economically viable position on these
3 programs.

4 The debtors submit that the motion
5 satisfies the requirements of Section 363 as it's founded
6 on business judgment, all the reasons set forth in the
7 Fesenmyer declaration, as well as the standards for a 9019
8 settlement, in that the price increases are considerable,
9 the avoidance of litigation is beneficial to the debtor,
10 and the debtors believe that the negotiated terms of the
11 pricing and other terms of the settlement agreement are as
12 favorable as they could have obtained through these
13 negotiations.

14 As with the situation with Ford, the
15 alternative was to reject these various customer programs
16 and purchase orders. The debtors would have been faced
17 with the same parade of horrors that Mr. Ellman itemized,
18 which would have been negative impact on a relationship
19 with a large customer, potentially large rejection claims,
20 and litigation over those claims as well.

21 By contrast, the settlement puts the debtor
22 into an excellent position to work with Chrysler going
23 forward on a profitable basis. As with the other
24 settlement, the settlement agreement is the product of
25 substantial arms length negotiations, and it is another

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1 important cornerstone in the debtors' restructuring
2 efforts.

3 Once again, the debtors kept the committee
4 apprised of its progress. The committee advisers have had
5 access to the confidential information that's been provided
6 to the court, and we understand that the creditors'
7 committee has no opposition to the motion and no objections
8 to the motion have been filed. Accordingly, we ask that
9 your Honor grant the debtors' motion and sign the proposed
10 orders that we've submitted.

11 THE COURT: Here again, Messrs. Fesenmyer
12 and Stenger are in court. Does anyone want to make inquiry
13 of them?

14 There is no response. Your request for
15 relief is granted.

16 Here, too, I note that this is an
17 appropriate result under a business judgment standard, and
18 it also passes the best interest test and I will approve
19 it.

20 MR. ELLMAN: Thank you, your Honor. We
21 will submit the order at the conclusion of the hearing.

22 MR. ENGMAN: Good morning, your Honor.
23 Richard Engman of Jones Day a behalf of the debtor.

24 Your Honor, I'm here this morning asking
25 for approval and authority for the debtors to enter into an

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1 amendment to their purchase agreement with Coupled Products
2 LLC for the sale of their coupled products business.

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3 Your Honor may recall that the original
4 purchase agreement for the coupled products business was
5 approved in conjunction with the debtors' sale of its
6 overall fluids business.

7 On June 6th, to back up a little, this was
8 the third of the three groups of non core assets that the
9 debtors have sold throughout the case, in addition,
10 starting with trailer axles and engine hard products, in
11 March, your Honor, we filed a motion seeking authority to
12 approve bidding procedures for the auction and sale of the
13 fluid products business. Your Honor approved those bidding
14 procedures, and on June 4th we had an auction with
15 effectively two stalking horses.

16 The debtors were unable to get a single
17 buyer for all of the assets of the fluid products business,
18 and instead the best offers for stalking horse purposes was
19 an offer for certain of those assets at 75 million. We
20 were, at the time, happy to report that -- excuse me, 70
21 million. At the auction that group of assets was bid up,
22 and ultimately were the successful bidder at the auction
23 was in exchange of a purchase price of 85 million.
24 Unfortunately on the Coupled Products side there were no
25 other bidders except for the stalking horse bidder.

24

1 Your Honor may recall that the coupled
2 products business, the assets related to the coupled
3 products business historically have caused significant
4 operating losses for the debtors. Last year it was in
5 excess of 30 million. The debtors believe that if they
6 were required to shut down that business they would also
7 incur significant losses. There is also union issues and

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8 the like, which was the rationale and business judgment for
9 the debtors accepting the offer from Coupled Products LLC,
10 which was on its face a normal one dollar purchase price,
11 however, it also had a working capital adjustment that the
12 net effect of which would be that the debtors had expected
13 to pay Coupled Products about 10 million dollars to acquire
14 and take the liabilities associated with these assets.

15 Since that auction, since the order was
16 entered, the debtors and Coupled Products LLC have been
17 working to satisfy the various closing conditions in the
18 asset purchase agreement. The debtors believe, let me back
19 up one more time. Your Honor will note that our motion was
20 filed, today's motion was filed both under Section 363 and
21 Section 9019. The reason for that, your Honor, is that the
22 debtors do believe that all of the closing conditions under
23 the original purchase agreement have been satisfied.
24 Unfortunately, Coupled Products, the proposed buyer,
25 disagrees.

25

1 we have negotiated and discussed the matter
2 with Coupled Products. While we do believe that all the
3 closing conditions have been satisfied, we don't believe
4 that establishing that in requiring specific performance
5 from Coupled Products could be done quickly or easily.
6 Coupled Products, as I said, maintains that the closing
7 conditions have not been satisfied; that, among others,
8 certain contracts needed to be -- they needed to reach
9 agreements on certain contracts to their reasonable
10 satisfaction.

11 There is also a portion of the business

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12 that we refer to as the ITAR assets that the U.S. State
13 Department has, and those assets are products that the
14 business produces for military vehicles. The state
15 department has said that they wouldn't sign off on the sale
16 to the buyer if it included those assets. The debtors
17 believe that those assets are a small portion of the
18 business and not material, and that they could nevertheless
19 require the purchaser to close.

20 Notwithstanding that, as I stated, the
21 purchaser disagrees, which brings us to where we are today,
22 which is in the debtors' reasonable business judgment we
23 believe settlement of these issues rather than a litigation
24 and an attempt to require specific performance from the
25 purchasers is in the debtors' best interest. Under the

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1 amendment the buyer agrees that all of the closing
2 conditions under -- the relevant closing conditions under
3 the purchase agreement have in fact been satisfied.

4 The debtors and the buyer agree to work
5 together to satisfy some of the buyer's other concerns.
6 And most importantly for the debtors, the buyer agrees to
7 close within two days of your Honor entering an order
8 approving the amendment.

9 The cost of the amendment to the debtors,
10 your Honor, is the debtors have agreed to increase the
11 networking capital adjustment, so that we believe that the
12 net effect of this purchase will, by another five million,
13 make the net effect about 15 million going to the buyer.
14 Mr. Richard Morgner of Miller Buckfire, who is in the
15 courtroom, your Honor. He was the debtors' lead investment
16 banker. He could testify to the facts stated in the motion

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17 and to the debtors' business judgment as to why they
18 believe that entering into this amendment is the right
19 course of action and that closing this transaction on the
20 amended terms is in the best interest of the debtors and
21 their estates.

22 THE COURT: Does anyone want to be heard
23 with respect to the proffer? Does anyone want to examine
24 the witness? Does anyone want to be heard with respect to
25 the transaction?

27

1 MR. MAYER: The committee's professionals
2 have looked at this in some detail, your Honor, and we
3 support the relief requested.

4 THE COURT: I'm a little bit troubled,
5 because this is being modified based upon a resolution of
6 legal issues as to whether or not the other party to the
7 transaction would be required to close. And now that
8 closure is taking place at a further expense of some five
9 million dollars.

10 who's operating this business at this time?

11 MR. ENGMAN: The debtors are, your Honor.

12 THE COURT: And has the business been
13 sustaining losses during this period of time?

14 MR. ENGMAN: Significant losses, your
15 Honor.

16 THE COURT: So that we are dealing with
17 more than five million dollars going the other way?

18 MR. ENGMAN: Substantially.

19 THE COURT: what does significant mean?

20 MR. ENGMAN: Your Honor, we believe that if

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21 litigated the potential losses of either attempting to shut
22 down this business or maintaining the operations so that
23 specific performance could happen at the end of the
24 litigation would far exceed the five million and I think be
25 in the 20 to 30 million dollar range.

28

1 A VOICE: The business is losing two
2 million a month right now.

3 MR. ENGMAN: The business is losing two
4 million a month right now, your Honor.

5 MR. MAYER: Your Honor, there are other
6 issues about the availability of specific performance
7 relief that I don't think is appropriate to go into here.
8 Suffice to say that although the committee is not happy
9 about watching the price of getting out of this business go
10 up, we were convinced that, after a fair amount of due
11 diligence of our own, looking into the competing
12 allegations as to whether or not there was a breach,
13 whether or not performance could be compelled, whether or
14 not remedies really were available against the buyer, and
15 the degree of operational losses that would be sustained,
16 we did believe that this made some sense.

17 THE COURT: This buyer appears to have very
18 significant advantage and benefit over other parties in
19 interest or potential purchasers in that it's achieved a
20 CIFIUS approval, which is very hard to come by to be a
21 qualified purchaser.

22 MR. MAYER: Your Honor --

23 MR. ENGMAN: Your Honor, as debtors'
24 counsel it's a little harder for me to state the other
25 side's case, but I don't want to overstate ours either.

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1 One of the reasons that CIFIUS approval has
2 been granted is because of the removal of the ITAR assets,
3 and the ITAR assets are not excluded assets in the original
4 agreement. It's a little unclear that while we maintain
5 that we could force closing, notwithstanding that we would
6 not be delivering all the of the assets that were provided
7 for in the original agreement, I don't know that the court
8 would ultimately make the same conclusion.

9 Candidly, your Honor, while we thought it
10 was a better deal the way that it was, we still believe
11 that no other party before or after was willing to acquire
12 these assets and these liabilities for any like amount, and
13 we believe that it is in fact the best deal that the estate
14 can get or would get. And accordingly, it remains in the
15 best interest of the estate.

16 THE COURT: When is closing supposed to
17 take place?

18 MR. ENGMAN: We've asked for within two
19 days. And as a consequence, the proposed order, your
20 Honor, asks for a waiver of the ten day automatic stay.
21 It's set to close Friday.

22 THE COURT: Well, in view of the specter of
23 on going losses while the debtor maintains possession of
24 these assets and based upon this record, I do find that it
25 just gets over the line with respect to being within the

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1 zone of reasonableness. And given that the creditors'
2 committee has done it's due diligence and is supporting the

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transaction, I will approve it.

4 MR. ENGMAN: Thank you, your Honor. If I
5 can approach I do have a proposed order.

6 THE COURT: Yes.

7 MR. ENGMAN: There's one change from the
8 order that was attached to our motion, and that that's
9 simply in paragraph 3. One of the assets being sold is the
10 name Coupled Products. And as a consequence, we are asking
11 for express authority to change the debtors' name from
12 Coupled Products LLC to CP Products LLC.

13 THE COURT: Duly noted. I've signed the
14 order.

15 MR. ENGMAN: Thank you, your Honor.

16 MR. ELLMAN: Your Honor, Jeffrey Ellman
17 again on behalf of the debtors. Moving on with the agenda
18 to item 6, which is a retention application for Cushman and
19 Wakefield of Oregon, Inc. to serve as appraisers for the
20 debtors. These will be real property appraisers. It's
21 also seeking approval of Cushman and Wakefield's fee
22 structure.

23 This is the second in sort of a three part
24 series of these retentions. You may recall, and these
25 relate to fresh start accounting, your Honor. You may

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1 recall that on August 22nd the Court approved retention of
2 Hilco to do personal property appraisal services; that
3 again was approved by a court order on August 22nd.

4 Cushman and Wakefield, which is before the
5 court today, will be the real estate appraisers for fresh
6 start accounting, and Ernst and Young, which is already a
7 retained professional in the case, along with their other

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8 roles, would expand the scope of their retention to take
9 the lead sort of the lead role in coordinating fresh start
10 accounting. And we expect that an application to do that
11 with respect to Ernst and Young will be filed in the near
12 term. It has not yet been filed.

13 I believe at the last hearing where we
14 talked about Hilco, we described briefly the fresh start
15 accounting needs, so I won't belabor that. But fresh start
16 accounting principals are to be applied to qualifying
17 debtors upon emergence from Chapter 11. And under those
18 circumstances, the debtor will have to allocate its
19 reorganization valued assets and liabilities that will
20 include doing real property appraisals prior to emergence.
21 And as the court is aware, the debtors are pursuing
22 vigorously emergence by the end of the year, if possible,
23 and therefore this is an appropriate time that we need to
24 have the fresh start accounting up and running.

25 Cushman and Wakefield is the largest fully

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1 integrated real estate valuation organization in the world.
2 I don't think there should be any issue about their
3 qualifications to do the job. One thing to mention, which
4 is very similar of what was presented to the court on
5 Hilco, is that Cushman and Wakefield through an affiliate
6 did provide services to Citigroup, one of the Citigroup
7 companies prepetition to do real estate appraisals for DIP
8 financing purposes. That engagement is done at this point.
9 They are not continuing to have that role for Citigroup.

10 But it does mean that they are familiar,
11 they have already done appraisals for about 40 percent of

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12 the properties at issue here. There are no conflicts in
13 our belief because the appraisals are for different
14 purposes. In the financing context these were orderly
15 liquidation valuations for financing. Here we have fair
16 market valuations for the fresh start accounting. Again,
17 this is similar to we did with Hilco.

18 That background allows Cushman and
19 wakefield to bring to bear some efficiencies that will
20 allow the fee to be much lower than it otherwise would have
21 been.

22 we also have retained previously in the
23 case Signature Associates, which is a real estate
24 consultant. And they have done some analyses of property
25 and some market studies, I guess is what you could call

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1 them. Cushman and wakefield can rely, for some of the
2 properties, on those market studies as well. So that we
3 are trying to the take advantage of the services that have
4 been prepared or performed in the past and not duplicating
5 effort, again, achieving some efficiencies in value.

6 At the end of the day what Cushman and
7 wakefield will perform is a fair valuation of certain
8 properties, about 13 fiscal on site valuations and about 69
9 desktop appraisals, and then reviewing about 17 of these
10 market studies just for reasonableness that have already
11 been concluded, and then in 60 days the debtors will get a
12 report.

13 Between Cushman and wakefield, Hilco and
14 Ernst and Young, the roles are well defined. We don't
15 believe there will be duplication. We believe the
16 affidavit submitted with the application demonstrates that

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17 there is not a conflict or disinterest in this problem. We
18 do have a person that enquired about Section 327.

19 The fee is a flat fee of 300 thousand
20 dollars; that includes expenses. Again, we think that is
21 much lower than it would have been given the circumstances.
22 There are limitation of liability and indemnity provisions
23 in the engagement, and they have the standard carveouts and
24 limitations that we have seen before in other engagements
25 that the court requires carveouts for bad faith, self

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1 dealing, gross negligence, misconduct, any kind of
2 indemnity has to come to the court, any attorneys fees that
3 they might seek would have to come before the court. And
4 the payment of fees are, of course, subject to court review
5 and subjection to Section 330 review by the committee and
6 the U.S. Trustee.

7 I had a brief conversation with the U.S.
8 Trustee before the hearing. My understanding is that they
9 have no objection to this retention, and we would ask that
10 it be approved in the form of an order.

11 THE COURT: Does anyone want to be heard?

12 The application is granted.

13 MR. ELLMAN: Thank you, your Honor. If I
14 might approach?

15 THE COURT: Yes.

16 I've signed the order.

17 MR. FEINSTEIN: Your Honor, if I might
18 approach at this point and hand up the Chrysler order as
19 well?

20 THE COURT: I'll entertain it.

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21 I've approved the Chrysler order.

22 MR. ELLMAN: Thank you, your Honor.

23 There are two items left on the agenda.

24 Item number 7 is not going forward today. This was claims
25 matter that I think the court had some conversations about

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1 at a prior hearing. There was one remaining claim on this
2 omnibus objection relating to stock ownership by a
3 gentleman named Stephen Clausen.

4 The debtors are withdrawing this objection
5 without prejudice. We have determined that from the
6 information that he has provided in his claim, it does not
7 fit within this objection, and it might yet been
8 objectionable. For the reasons it's not a large dollar
9 amount claim, we are going to determine whether it is
10 appropriate at some later date to object to it or not. But
11 for purposes of this objection we are going to withdraw the
12 objection.

13 THE COURT: Marked withdrawn.

14 MR. ELLMAN: Thank you, your Honor. And
15 that brings us to the last item on the agenda, which is the
16 debtors' motion to establish the estimation procedures for
17 the claims of the U.S. Environmental Protection Agency and
18 the National Oceanic Atmospheric Administration of the
19 Department of Commerce and the Department of the Interior.
20 I see them coming up here.

21 I will just do a brief introduction. I
22 have some colleagues here who will take the lead on this,
23 but this is a matter of ongoing importance to our plan
24 process.

25 As the court is well aware, the debtors
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1 have objected to the claims of the government entities. I
2 mentioned, they relate to six Superfund sites. They are
3 very significant unliquidated contingent claims but they
4 could be as much as 300 million dollars going to the
5 government. So we have to advance the plan process, and
6 for various reasons I'm sure we will discussed here and are
7 annexed in our papers, determine that we do need to move
8 forward with an estimation of the claims based upon the
9 objections that we have. And we are prepared to do so
10 diligently and we would like to have that done by the end
11 of the year to permit our emergence and payment of
12 creditors on the schedule.

13 On in getting prepared we have with us, I
14 will introduce to the court, the team of lawyers who
15 focused on this and will continue to focus on this project,
16 Steve Bennett, who is our litigator sitting here at counsel
17 table, who I believe is familiar with the court from prior
18 litigation in this case, and also now at counsel table
19 Kevin Holewinski from our Washington D.C. office is an
20 environmental lawyer.

21 And if it please the court, I'll turn it
22 over to Mr. Bennett to discussion the motion.

23 MR. BENNETT: Good morning, your Honor.

24 THE COURT: Good morning.

25 MR. BENNETT: Steven Bennett from Jones

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1 Day. And as Mr Ellman mentioned, Mr. Holewinski from our
2 Washington office. I think his pro hac vice motion has

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3 been approved, I think he is admitted as well for purposes
4 of this matter.

5 MR. HOLEWINSKI: Correct.

6 MR. BENNETT: The real question here is one
7 of convenience of the court as to whether it is possible to
8 conduct this estimation hearing on the schedule that we've
9 proposed. Basically any time after December 4th, we would
10 be available to conduct that hearing. The form of the
11 hearing is also subject for the Court's discretion, but we
12 anticipate that it's conceivable to conduct the hearing in
13 a single day, perhaps a little bit more than that.

14 But it is an estimation hearing rather than
15 a full scale trial. As the court may well appreciate,
16 there is a good deal of flexibility associated with
17 estimation proceedings, and we would propose that the court
18 first tell us, we would hope, the availability for that
19 hearing, and then we would work backwards from that
20 schedule. We have started with the assumption that the
21 hearing could be conducted in December and have worked a
22 schedule on that basis.

23 The government opposes and proposes
24 essentially that the hearing not take place on until, at
25 the very earliest, March of 2008. We think that's a non

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1 starter. As the court is well aware, we have a plan
2 support agreement in place that is the result of extensive
3 negotiation connected to the labor proceedings, and is
4 related also to the financial support for the plan. That
5 basically calls for a completion of the plan process and
6 implementation of the plan by the end of February. In
7 order to do that, and in order to meet the expectations of

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8 customers and vendors and other constituents involved in
9 the case, we basically need to have a hearing on this
10 estimation matter sometime by the end of the year, perhaps
11 very early into the new year.

12 So, from our perspective, it is entirely
13 feasible to conduct such a hearing. The fact is that the
14 matters at issue factually may be somewhat difficult, but
15 the essential estimation process, which is to lay out for
16 the court what the potential exposure is and then to
17 itemize the points of allocation, divisibility, and
18 essentially make some sort of risk analysis as to the
19 potential exposure for the estate. That is a very familiar
20 process, and we think it is one that is well within the
21 competence of this court.

22 Now the complicating factor here is, from
23 the government's perspective, they have filed a motion to
24 withdraw the reference. We were in front of Judge
25 Scheindlin just yesterday on that subject. She is going to

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1 hear that question at the end of October. That's the
2 schedule that she set based on her availability.

3 They have also filed a motion for stay
4 pending that determination by the District Court. We think
5 that's a non starter as well, to wait until the end of
6 October to find out whether we are going to go ahead with
7 this process we think makes no sense.

8 Instead, what we propose is that there be a
9 schedule in place. If at some point there is justification
10 before this court for modification of the schedule, that's
11 always possible to entertain. If at some point Judge

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12 Scheindlin makes this determination on the withdrawal of
13 reference adversely, and we think there is a very good case
14 for our position that is not a matter of mandatory
15 withdrawal, and we have demonstrated to the court with the
16 CERCLA briefing, that the government has in other recent
17 cases proceeded in bankruptcy court through the estimation
18 process for CERCLA claims.

19 But if, on that sort of worst case
20 scenario, somehow the matter does end up in district court,
21 that would mean that at very least we have a head start on
22 the process. We would have initiated the process, and
23 conceivably could follow that same schedule or have some
24 modification at that point.

25 In short, your Honor, it's our view that

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1 there's no reason at this point to delay determination of a
2 schedule. There's certainly no reason to start with the
3 assumption that the schedule calls for a hearing in March
4 as opposed to whatever the earliest convenience of the
5 court is in December, largely because picking March
6 immediately blows the plan support agreement, and also will
7 bash the expectations of customers, vendors and others
8 involved in the process.

9 That all said, your Honor, my understanding
10 is that the creditors' committee has reviewed the matter
11 and they are in support. The ad hoc committee of bond
12 holders had also filed a short statement in support.

13 And with that, your Honor, I believe we
14 have a form of order available, but I'm sure you want to
15 hear from the government and from the creditors.

16 MR. MAYER: Who would you like to speak

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17 first?

18 THE COURT: Support/pro.

19 MR. MAYER: I am in support, your Honor.

20 And I think it's appropriate for the

21 creditors to indicate their view on this matter.

22 This is a site the debtors haven't owned
23 for 50 years and they haven't operated for 70. In the
24 debtors' disclosure statement there is an indication as to
25 the total amount that's been reserved for environmental

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1 damages on its properties is 15 and a half million dollars.
2 That's it. When the government filed its claims for over
3 300 million dollars we were thunderstruck. This came out
4 of nowhere for a property the debtors haven't owned for 50
5 years or operated for 70.

6 The notion that this claim would delay this
7 case to March, with its concomitant damages of the estate
8 we find profoundly troubling, and would ask your Honor to
9 so order.

10 MR. YANKWITT: Good morning, your Honor.
11 Russell Yankwitt and Pierre Armand with the U.S. Attorney's
12 Office.

13 We agree with Mr. Ellman and agree to work
14 diligently to resolve this case; however, the schedule that
15 they proposed is virtually impossible to comply with. The
16 schedule does not allow sufficient time for depositions, it
17 doesn't allow time for third party discovery, it doesn't
18 allow time for in limine motions. There are many complex
19 issues before this court and Judge Scheindlin on joint and
20 sole liability, on divisibility, on allocation of damages.

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21 These are going to require in limine motions which then may
22 or may not be appealed to the district court. The schedule
23 that they provide for is just not workable.

24 with respect to the argument made that we
25 shouldn't wait until October, until the end of October to

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1 have a scheduling conference, let me explain to the court
2 that between now and the end of October the parties will
3 actually be very busy on this matter, we will be briefing
4 the withdrawal motion before Judge Scheindlin, we will be
5 responding in particular to their opposition motion, we
6 will be responding to the claim in this court which we are
7 not asking for a extension on.

8 The government has already been
9 voluntarily, without a court order, without document
10 requests, been producing documents to Dana on an ongoing
11 basis. We will continue to do that. We are going to have
12 settlement discussions both as to the non CDE, which is the
13 New Jersey site. There are six other sites throughout the
14 country that we are hopefully going to resolve. We are
15 also going to resume some discussions on the CDE site. All
16 this will happen between now and October. So the parties
17 are very busy.

18 Furthermore, we are going to appear before
19 Judge Scheindlin potentially on October 3, depending on how
20 your Honor rules on our stay motion. At that point the
21 judge could also give us a discovery schedule as well. So
22 we are not waiting to the end of October to begin work.

23 For a brief moment, your Honor, of
24 background. The government filed its proof of claim more
25 than one year ago. We were operating under the assumption

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1 that debtors were going to reserve the entire amount, the
2 300 million dollars amount, and that after they emerged
3 from bankruptcy, we would then have a trial before your
4 Honor or the district court judge, to resolve the true
5 amount of the CERCLA claims.

6 The debtors changed their mind, which they
7 are entitled to do. But to try to cram this down in two
8 months when there are these incredibly complex issues, both
9 factually. Yes, they haven't used or operated the property
10 in more than 50 years, but under CERCLA that's irrelevant.
11 They are still liable. We need to go back over 70 years,
12 80 years in terms of factual knowledge, in terms of taking
13 depositions, interrogatories. It's impossible to be done
14 with that in two months, your Honor.

15 We think it makes sense to wait and see
16 what your Honor's determines on the stay motion and what
17 Judge Scheindlin determines on the withdrawal motion and
18 proceed accordingly.

19 Alternatively, we have proposed a schedule
20 to your Honor which is aggressive, is ambitious, and we
21 will do our best to comply.

22 Thank you.

23 THE COURT: Does anyone else want to be
24 heard?

25 MR. BENNETT: No, your Honor. I think the

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1 short of this on the necessity for it is obvious to the
2 court. You are well aware of the plan support agreement,

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3 would that we could have operated on this casual basis for
 4 determination of this claim, it was simply not the case at
 5 this point that we have the luxury of time. We need to
 6 have certainty, relative certainty as to the exposure here
 7 to move the plan process forward. That's why it's
 8 essential.

9 From our perspective, at least, having a
 10 schedule at this point will move the parties into the
 11 formal discovery beyond whatever voluntary exchange may
 12 otherwise occur. And if at some point there is a need for
 13 modification either before this court or ultimately on this
 14 worst case scenario that Judge Scheindlin takes it up in
 15 district court, we won't have lost of the better part of a
 16 month in not pursuing that process.

17 THE COURT: Well, first I note that both
 18 parties have proposed aggressive discovery schedules, which
 19 in some respects undercuts many of the government's ..
 20 positions because they seem to be amenable to a very
 21 aggressive schedule, and that includes getting to it right
 22 away.

23 With respect to the matters before Judge
 24 Scheindlin, whatever determines there determines, but in
 25 both instances, whether it's here or there, an aggressive

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1 schedule is called for. And I do note with respect to the
 2 schedule that the matters at issue, they, even as pointed
 3 out in the government's papers before me, are essentially
 4 factual. So, I am constrained to grant the debtors'
 5 application for the following reasons: Before me I have
 6 the motion (the "Estimation Motion") of Dana Corporation
 7 ("Dana") and forty of its domestic direct and indirect

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8 subsidiaries, as debtors and debtors in possession for the
9 entry of an order to establish procedures for the
10 estimation of certain environmental claims pursuant to
11 Section 502(c) of the Bankruptcy Code, 11 U.S.C. Sections
12 101 through 1532 (the "Bankruptcy Code"), and Rule 9014 of
13 the Federal Rules of Bankruptcy Procedure (the "Bankruptcy
14 Rules"). The relevant claims are proof of claim number
15 13796 ("Claim 13796") filed for an unliquidated amount
16 against Dana filed collectively on behalf of the United
17 States Environmental Protection Agency ("EPA"). The
18 National Oceanic and Atmospheric Administration of the
19 United States ("NOAA"), the Department of Commerce ("DoC")
20 and the United States Department of the Interior acting
21 through the Fish and wildlife Service (collectively the EPA
22 and DoC, which we will call the "Government") and proof of
23 claim number 13321 filed on behalf of the EPA in an
24 unliquidated amount against the Debtor Break Systems, Inc.
25 ("Claim 13321" and, collectively with Claim 13796, the

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1 "Claims").

2 The government seeks to recover 300 million
3 dollars in past and future costs to clean up six different
4 Superfund sites that were allegedly owned and/or operated
5 by Dana during the time that hazardous substances were
6 disposed of there, or at which Dana arranged for disposal
7 of hazardous substances, over the past 100 years. The
8 claims relating to the site in South Plainfield, New Jersey
9 account for most of the 300 million dollars, with 65
10 million dollars relating to the other five sites. The
11 debtors assert that the Claims are substantially overstated

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12 and should be disallowed entirely, or reduced. On
13 September 6, 2007, the Debtors filed the Estimation Motion
14 (See ECF Docket number 6112). On September 7, 2007, the
15 Debtors filed an objection to the above referenced proofs
16 of claim. (See ECF Docket number 6128). The Government
17 filed an objection to the estimation motion. The Official
18 Committee of Unsecured Creditors and the Ad Hoc Committee
19 of Note Holders, collectively, with upwards of 3 billion
20 dollars at stake in these cases, or possibly much more,
21 filed joinders to the Estimation Motion.

22 The background is that at the time of the
23 filing of the cases, the Debtors showed liabilities of 7.6
24 billion dollars and employed more than 45 thousand people
25 and are a substantial factor in a major industrial segment

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1 of the United States.

2 On August 31, 2007, the Debtors filed their
3 joint plan of reorganization (the "Plan") and are pursuing
4 confirmation of the Plan and their goal of emerging from
5 Chapter 11 before the end of 2007. The Plan includes a
6 plan emergence condition requiring that the total amount of
7 allowed general unsecured claims in certain categories
8 shall not exceed 3.25 billion dollars (the "Plan Cap").
9 See Section IV.B.5. of the Plan. The Government's Claims
10 are within the group of General Unsecured claims covered by
11 the Plan Cap.

12 The Claims Procedures Order entered by this
13 Court on November 9, 2006 (see ECF Docket number 4044)
14 expressly reserved the Debtors' "rights to seek an order of
15 the Court approving additional or different procedures with
16 respect to specific Claims or categories of Claims." The
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17 Debtors contend that the prompt determination of the
 18 allowed amount of Claims is necessary to facilitate the
 19 Debtors' emergence from Chapter 11 by the end of 2007. The
 20 debtors are requesting approval of procedures to complete
 21 the final estimation of the Claims for purposes of
 22 allowance, treatment and distributions in these cases
 23 before the end of 2007. The government requests a more
 24 lengthy process, including time for extensive discovery and
 25 a full trial before this court or otherwise in March of

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1 2008.

2 with respect to Estimation. Section 502(c)
 3 of the Bankruptcy Code provides that:

4 (c) There shall be estimated for purposes of
 5 allowance under this section --

6 (1) any contingent or unliquidated claim,
 7 the fixing or liquidation of which, as the case
 8 may be, would unduly delay the administration of
 9 the case;

10 11 U.S.C. 502(c) see Frito Lay, Inc. against LTV Steel
 11 Company (In re Chateaugay Corp.), 10 F.3d 944, (Second
 12 Circuit 1993). ("A Bankruptcy Court must estimate 'any
 13 contingent or unliquidated claim, the fixing or liquidation
 14 of which, as the case may be, would unduly delay the
 15 administration of the case'"), In re Lionel LLC, 2007
 16 Westlaw 2261539 (Bankr. Southern District of New York
 17 August 3, 2007) In re G-I Holdings, Inc., 2006 Westlaw
 18 2403531, (Bankr. District of New Jersey August 11, 2006)
 19 ("Section 502(c) of the Bankruptcy Code is drafted in
 20 mandatory terms. That is, any contingent or unliquidated

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21 claim 'shall' be estimated so long as the liquidation of
22 the particular claim would "unduly delay the administration
23 of the case.'"); In re Lane 68 B.R.609, 611 (Bankr.
24 District of Hawaii 1986) ("This duty of the bankruptcy
25 court is mandatory, since the language of [Section 502(c)]

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1 states 'shall'). A main goal of the Bankruptcy Code is to
2 equitably distribute the debtor's assets among its
3 creditors. Lengthy bankruptcy proceedings cause delayed
4 distributions, which in turn, greatly devalue the claims of
5 all creditors as they cannot use the assets until they
6 receive them. See Paramount Publix Corp., 8 F.Supp.644,
7 646-47 (Southern District of New York 1934) ("Time is of
8 the essence in bankruptcy administration. An early
9 distribution of the bankrupt's assets among his creditors
10 is imperative").

11 The government objects to the estimation
12 motion on the grounds that the estimation, and Dana's
13 objection to the Claims, are subject to mandatory or
14 permissive withdrawal to the district court pursuant to 28
15 U.S.C. Section 157(d) and it is apparent that the
16 Government has already filed their motion to withdraw the
17 reference on September 18th, yesterday. But it is clear
18 from the pleadings before this Court that the dispute is
19 essentially a factual issue. The Government contends that
20 five of the six government claims, totaling 65 million
21 dollars, are not suitable for estimation or early
22 adjudication because they are relatively small and/or not
23 contingent and unliquidated environmental liabilities,
24 however, these claims add up to 65 million dollars and are
25 essentially unliquidated. The Government suggests that

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1 document production will be a "major undertaking" and that
2 fact discovery will be complicated because of the time that
3 has passed since the alleged contamination took place. The
4 Debtors, however, contend that significant portions of
5 discovery have already been completed and assert that
6 discovery can be completed in the short timeframe set in
7 their proposed order. The Government also complains that
8 expert testimony in the case will be extremely time
9 consuming because of the large areas involved and the
10 expertise required and cannot be completed in the timeframe
11 proposed by the Debtors, but apparently they do think that
12 they can complete discovery within their timeframe, which
13 is also aggressive.

14 The Government's Claims are the largest
15 remaining unliquidated disputed claims in these cases. A
16 delay in the resolution of the Claims may impact the
17 ability of the Debtors to emerge from bankruptcy in a
18 timely manner. The Debtors did not bring this time
19 restraint on themselves. Congress enacted in the recent
20 amendments to the Bankruptcy Code, a limitation on the
21 courts' ability to extend exclusivity and elongate the
22 process. The Debtors' exclusivity now expires eighteen
23 months after the date that the petition was filed. In a
24 case such as the one currently before the Court, the
25 Debtors have had much to accomplish in those eighteen

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1 months. These Debtors negotiated new customer agreements
2 which came on before the court in a very substantial nature

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3 this morning, secured their management team, renegotiated
4 trade agreements, and resolved substantial and complex
5 issues with their unions, breaking new ground in labor
6 management issues for this industry. The Court cannot
7 fault the Debtors, as the Government suggests, for not
8 litigating the environmental claims earlier in these
9 proceedings, they have had, and this Court has had, a very
10 full plate.

11 If these Debtors were required to reserve
12 the full amount of the claims filed, the creditors would be
13 held hostage to the Government's plan for drawn out
14 discovery and litigation. If the Debtors are able to
15 confirm their Plan by the end of this year or shortly
16 thereafter, long, drawn out discovery and litigation
17 between the Debtors and the Government should not preclude
18 Dana's creditors from receiving their distributions
19 measured in billions of dollars.

20 With respect to procedures. Although the
21 Bankruptcy Code does not explicitly detail procedures for
22 estimating claims, a Bankruptcy Court may use whichever
23 method is best suited to the circumstances. Bittner
24 against Borne Chemical Company, 691 F.2d 134, 135 (3d
25 Circuit 1982); In re Seaman's Furniture Company of Union

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1 Square, Inc., 160 BR at 41. In In re Baldwin-United Corp.,
2 55 B.R. 885, 889 (Bankr. Southern District of Ohio 1985)
3 there the court utilized procedure akin to a summary trial
4 where there was no jury, live testimony by one witness per
5 party, a discovery cutoff date, and only two days for the
6 hearing. Many courts adhere to the method set forth in the
7 Baldwin-United case. See, for example, In re MacDonald 128
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8 B.R. 161, 166-67 (Bankr. Western District of Texas 1991)
 9 (employing an abbreviated procedures practically the same
 10 as Baldwin-United); In re Apex Oil Company, 92 B.R. 843
 11 (Bankr. Eastern District of Missouri 1988) (utilizing a
 12 methodology analogous to Baldwin-United); NLRB against
 13 Greyhound Lines (In re Eagle Bus Manufacturing), 158 B.R.
 14 421 (District of Texas 1993) (two-day summary trial);
 15 DeGeorge Financial Corp. against Novak (In re DeGeorge
 16 Financial Corp.), 2002 U.S. District LEXIS 17621 (District
 17 of Connecticut 2002) (a one-day trial). Although this is
 18 not the only method of conducting the estimation procedure
 19 (see In re Nova Real Estate Investment Trust 23 B.R. 62, 65
 20 (Bankr. Eastern District of Virginia 1982), a longer
 21 method, such as a full-blown trial on the merits, would
 22 "eviscerate the purpose underlying Section 502(c)."
 23 "Baldwin-United 55 B.R. at 899. Moreover, a more time
 24 consuming method would run counter to the "efficient
 25 administration of the bankrupt's estate ..." Bittner, 691

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1 F.2d at 135. Furthermore, in estimating the value of a
 2 claim, the Court of Appeals for the Second Circuit has
 3 stated that the courts should make a "speedy and rough
 4 estimation of [the] claims for purposes of determining
 5 [claimant's] voice in the Chapter 11 proceedings ..." In
 6 re Chateaugay Corp., 944 F.2d 997, 1006 (2d Cir. 1991).
 7 In view of the inability of the parties
 8 here to agree on a reasonable reserve sum, and a timeline
 9 calculated to permit a substantial and timely distribution
 10 to the billions of dollars of other creditors, I do approve
 11 the Motion to Estimate. The timeline submitted by the

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12 Debtors for discovery, pretrial briefing, and the initial
13 hearing on matters of law for this court is approved, with
14 certain changes to account for the Court's calendar, that
15 is a trial hearing to be held in January of 2008. That
16 would be early January 2008.

17 Accordingly, the Debtors' Motion is
18 approved.

19 MR. ELLMAN: Thank you, your Honor. We do
20 have a form of order. Should we coordinate with chambers
21 on a date? Would you like us to just submit the order and
22 you can fill in the blanks?

23 THE COURT: You can coordinate with
24 chambers on the dates, and you can coordinate because we
25 will have a chambers conference right now on scheduling.

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1 MR. YANKWITT: Your Honor, just simply, if
2 the hearing is going to be in January rather than December,
3 we would ask that schedule be pushed on the interim dates
4 by a week or two just to --

5 THE COURT: The debtors have already
6 indicated in their proposal that they are accommodating the
7 schedule in accordance with the final hearing date, so that
8 application is granted.

9 I'll see you all in chambers.

10 MR. ELLMAN: Thank you, your Honor. That's
11 the end of our agenda.

12 THE COURT: Thank you all.

13 (End of Proceedings.)

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C E R T I F I C A T E

STATE OF NEW YORK }
 }
COUNTY OF WESTCHESTER } SS.:

I, Denise Nowak, a Shorthand Reporter and
Notary Public within and for the State of New
York, do hereby certify:

That I reported the proceedings in the
within entitled matter, and that the within
transcript is a true record of such proceedings.

I further certify that I am not related,
by blood or marriage, to any of the parties in
this matter and that I am in no way interested
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this _____ day of
_____, 2007.

DENISE NOWAK
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